



**PUBLIC EMPLOYMENT
RELATIONS BOARD**

ANNUAL REPORT

**to the
LEGISLATURE**



1989-90

PUBLIC EMPLOYMENT RELATIONS BOARD

October 15, 1990

**1989-1990 Report
To The Legislature**



**George Deukmejian
Governor
State of California**

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William A. Craib, Member

Willard A. Shank, Member

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MESSAGE FROM THE CHAIRPERSON

This year PERB continued its efforts to streamline operations and improve the collective bargaining process. The Board issued 113 decisions with a turnaround time in 103 median days. A key element is PERB's efforts to promote labor-management cooperation in the public schools and thereby reduce the number of labor-management disputes.

PERB presented a second statewide conference featuring labor-management cooperation in the public schools, with an overflow attendance and commendations from many sectors. PERB conducted numerous one- and two-day labor-management cooperation orientation intensive workshops designed to introduce representatives, both labor and management from the same school district, to alternative bargaining methodologies and effective ways to resolve workplace conflicts.

PERB also conducted four five-day intensive workshops on labor-management cooperation. Participants in the five-day workshops are given an opportunity to practice dealing with conflicts in a way that influences need-based, win-win outcomes. Following the completion of a workshop, a PERB trained neutral facilitator is assigned to work with the participants throughout the school year. Last year 283 individuals participated in the five-day workshops, representing 20 school districts and 29 unions. Graduates of these workshop will testify to a significant improvement in their labor-management relationship--their ability to reach compromises, to jointly identify their interests and then to fashion solutions that are satisfactory to both parties.

As part of PERB's 1990-1991 Budget, the Legislature denied PERB's proposed budget augmentation to fund the labor-management cooperation program, and mandated that responsibility for the administration of the labor-management cooperation program be transferred to a nonprofit corporation not later than April 1, 1991. PERB is working with interested parties to develop this new corporation.

As PERB's administration of this program comes to a close, the Board looks back on a job well done. The Board is pleased with the success of its labor-management cooperation efforts and the resulting new spirit of cooperation and problem solving that has permeated the public school system--teachers, classified employees and other school employees working with school Boards and administrators to raise the quality of public education. The programs's stunning success speaks for itself. On behalf of the Board and its staff, I wish to thank the parties for their assistance and support over the past year.

DEBORAH M. HESSE



**Deborah M. Hesse
Board Chairperson**

Deborah M. Hesse is in her second five-year term as Member and Chairperson of the California Public Employment Relations Board. Mrs. Hesse was first appointed on February 1, 1984, and reappointed on December 28, 1988. Mrs. Hesse is also a Member and former Chairperson of the California Advisory Committee to the U.S. Civil Rights Commission. She is a Member of the Industrial Relations Association of Northern California. She serves on several advisory boards -- California State University, Sacramento Labor-Management Program, California Public Employee Relations (labor relations periodical), and

the University of California - Berkeley Institute of Labor Research Labor-Management Program.

Mrs. Hesse was the Chief Deputy Director of the California Department of Personnel Administration. She was the Affirmative Action Officer of the Department of Justice. Mrs. Hesse was Assistant to the Director in the Governor's Office of Employee Relations.

Mrs. Hesse has a bachelor's degree in social work and a master's degree in public administration from the California State University at Sacramento. Her term expires January 1, 1994.

BOARD MEMBERS

William A. (Bill) Craib was appointed as a member of the Public Employment Relations Board in February 1986. He retired from the California Department of Transportation in 1981, serving as an engineer since 1958. For the 1984-1985 year, he was elected Honorary Mayor of Orangevale, California, where he then lived. He served as President of the Orangevale Chamber of Commerce 1985-1986. From 1980 to 1983, he served as national President of 500,000 Assembly of Governmental Employees. He was designated as All State Commander VFW in 1985. Mr. Craib was President of the California State Employees Association (CSEA) from 1976 to 1979. He also served as an elected public official and board member of the Westborough County Water District. Mr. Craib was voted into "Who's Who in California" in December 1988. His term as a member of the Public Employment Relations Board expires January 1, 1991.



William A. Craib
Board Member



Willard A. Shank
Board Member

Willard A. Shank was appointed as a member of the Public Employment Relations Board in April 1987. He served as the Adjutant General of the California National Guard from 1983 to February 1987. Member Shank was the Assistant Adjutant General of the California National Guard from 1975-1977. He joined the California Department of Justice as a Deputy Attorney General in 1950. He also served as Chief Assistant Attorney General Civil from 1978-1983. Mr. Shank is a member of the State Bar Association. He received his Bachelor of Arts Degree from the University of California, Berkeley in 1946 and his juris doctorate from the same university four years later. His term expires January 1, 1992.



Richard L. Camilli
Board Member

Richard L. Camilli was appointed as member of the Public Employment Relations Board in November 1988. Mr. Camilli was Assistant Commissioner for the Department of Corporations' Health Care Services Division from 1984-1988. From 1983-1984 he was undersecretary for the Health and Welfare Agency. From 1982-1983 he served as the associate warden for Folsom State Prison and from 1980-1982 he was a deputy director for the Department of Corrections. Prior to that he was a manager for the State Personnel Board from 1976-1980, and assistant to the legislative counselor for the state Legislative Counsel from 1975-1976, director of the Employment Development Department from 1974-1975, president of Health Management Systems, Inc., a Sacramento consulting and data processing service company from 1973-1974 and from 1971-1973 he was Executive Director for the State Personnel Board. Mr. Camilli received his bachelor's degree in business administration from the University of Santa Clara. His term expires January 1, 1993.



Alex R. Cunningham
Board Member

Alex R. Cunningham was appointed as a member of the Public Employment Relations Board in January 1990. Immediately prior to that he served as Special Assistant to the Governor for Earthquake Recovery following the devastating Loma Prieta earthquake of October 1989. Since 1986 he directed the state's Toxic Substance Control Program. Prior to that he served as Chief Deputy Director for the California Department of Water Resources. From 1978 to 1983, Mr. Cunningham served as Director of the Governor's Office of Emergency Services and also was President of the National Emergency Management Association.

Mr. Cunningham began his career in state service in 1959 with CALTRANS and served in several capacities until 1978. Mr. Cunningham is a Colonel in the Army Reserve and a graduate of the prestigious U.S. Army War College. He received his Bachelor of Engineering (Civil) degree in 1959 from Villanova University (PA). His term expires January 1, 1995.

PURPOSE AND DUTIES OF PERB

PURPOSE

The Public Employment Relations Board was created by the provisions of the Educational Employment Relations Act (EERA) of 1976 (Government Code section 3540, et seq.). This statute was authored by State Senator Albert S. Rodda, and established collective bargaining in California's public schools K-14. Collective bargaining was established in state government by the State Employer-Employee Relations Act of 1978, known as the Ralph C. Dills Act (Government Code section 3512, et seq.). In 1979, coverage was extended to higher education under the provisions of the Higher Education Employer-Employee Relations Act (HEERA) authored by Assemblyman Howard Berman (Government Code section 3560, et seq.).

PERB is the quasi-judicial agency established to administer these statutes and adjudicate disputes that arise under them. The Board

is empowered to: (1) conduct secret ballot elections to determine whether or not employees wish to have an employee organization exclusively represent them at the bargaining table; (2) prevent and remedy unfair practices, whether committed by employers or employee organizations; (3) break impasses that may arise at the bargaining table by establishing procedures to resolve such disputes; (4) ensure that the public receives accurate information and has time to register its opinion regarding negotiations; (5) interpret and protect the rights and responsibilities of employers, employees and employee organizations under the Acts; (6) monitor the financial activities of employee organizations; (7) conduct research, perform public education and conduct training programs related to public sector employer-employee relations.



Executive Director DENNIS BATCHELDER served as Deputy Director for the Department of Personnel Administration before his appointment to PERB in 1988. Dennis' background includes a degree in journalism and service as the chief negotiator for Sacramento County.

Approximately 665,174 public sector employees and 1,169 employers are included under the jurisdiction of these three Acts. The majority of these employees (450,000+) work for California's public school system from pre-kindergarten through, and including the Community College system (K-14). The remainder of the employees covered are employed by the State of California (120,000) or the University of California, the California State University, and the Hastings College of Law (88,000). Municipal, county, and local special district employers and employees are not subject to PERB jurisdiction, but rather are covered under the Meyers-Miliias-Brown Act.

ORGANIZATION OF PERB

PERB is headquartered in Sacramento with regional offices in Los Angeles, Sacramento and San Francisco. The major organizational elements of the agency consist of the Board, the Division of Administrative Law, the General Counsel, the Division of Representation and the Division of Administrative Services.

The Board is composed of five members appointed by the Governor and subject to confirmation by the State Senate. In addition to the overall responsibility for administering the EERA, the Ralph C. Dills Act and HEERA, the Board itself acts as an appellate body to hear challenges to decisions by its agents and administrative law judges. In the 1989-1990 reporting year, 113 Board decisions were issued. These

decisions were issued in a median of 103 days. There were 139 appeals to the Board that were docketed in fiscal year 1989-1990. Only 13 were appealed to the State Appellate Courts. Four other cases were appealed to Superior Court and four cases were appealed to the Supreme Court. Currently, there are 26 appeals pending before the Board.

The Division of Administrative Law houses PERB's administrative Law Judges (ALJ). The ALJs hold informal settlement conferences on the unfair practice cases. If no agreement is reached, another ALJ conducts a formal hearing and maintains a record. The ALJ issues a proposed decision of written findings and legal conclusions that are binding on the parties if no appeal is



Chief Administrative Law Judge GARY GALLERY served as the General Counsel to the California Community College Commission prior to his work at PERB as an Administrative Law Judge.

filed. If a party disagrees with the ALJ's decision, an appeal may be filed with the Board itself. The Board issues a decision and if the parties still disagree, the case may be appealed to the State Appellate Courts.

In the 1989-1990 reporting period, 54 proposed decisions on unfair practice allegations were issued by the ALJs. There were 23 cases (42%) appealed to the Board and 29 (54%) became final without an appeal being filed. Two decisions were in appeal processing with time running to appeal the decision.

The General Counsel is the Board's chief legal officer. The General Counsel also oversees the agency's charge processing and litigation functions.

In litigation, the General Counsel represents the Board when its formal decisions are challenged in court, when attempts are made to enjoin the Board's processes, and when the Board wishes to seek injunctive relief against alleged unfair practices.

In the capacity of charge processing, a regional attorney in each regional office is responsible for investigating unfair practice charges to determine whether they reflect a "prima facie" case of unfair practice. After investigation, regional attorneys resolve unfair practice charges by issuing complaints or dismissing charges that do not state a prima facie case.



General Counsel JOHN SPITTLER previously was the Deputy Executive Director of PERB and Deputy General Counsel. He also served as a Deputy Attorney General in the Civil Division of the Office of the Attorney General.

The Division of Representation has representatives in each regional office which include a Regional Director, Labor Relations Specialists, and support staff. The division is responsible for handling a broad range of representational matters, including bargaining unit configurations, unit modification requests, certification and decertification elections, and elections to approve or rescind organizational security arrangements. The Division of Representation also handles

public notice complaints, requests to certify negotiation disputes to mediation and factfinding, and allegations of noncompliance with PERB orders. The Division has also developed and implemented PERB's Labor Management Cooperation project.



Chief, Division of Representation JANET WALDEN served in various capacities since coming to PERB in 1976. She currently heads PERB's Labor-Management Cooperation project. Her background includes a degree in social work.

and employees. It also maintains liaison with the Legislature and the Executive branch of state government. In keeping with State of California guidelines, PERB maintains an affirmative action policy as a means of achieving equal employment opportunities. PERB's policy prohibits discrimination based on age, race, sex, color, religion, national origin, political affiliation, ancestry, marital status, sexual orientation or disability. PERB continues to maintain and ensure equal levels in the organization. PERB employs approximately 90 persons throughout the State, including permanent personnel, temporary employees and student assistants.

The Division of Administrative Services provides the technical and support services of the PERB, such as business services, personnel, accounting, data processing, mail and duplicating. This division also coordinates training, and arranges and conducts meetings, many of which are held as forums designed to facilitate communication between employers

PERB ACTIVITIES

REPRESENTATION

The representation process normally begins when a petition is filed by an employee organization to represent classifications of employees which reflect an internal and occupational community of interest. If only one employee organization petition is filed and the parties agree on the unit description, the employer may either grant voluntary recognition or ask for a representation election. If more than one employee organization is competing for representational rights of the same unit, an election is mandatory.

If either the employer or an employee organization dispute the appropriateness of a unit or the employment status of individuals within the unit, a Board agent convenes a settlement conference to assist the parties in resolving the dispute. The Board has historically stressed voluntary settlements and has consistently and effectively offered the assistance of Board agents to work with the parties toward agreement on unit configurations.

If the dispute cannot be settled voluntarily, a Board agent will conduct a formal investigation and/or hearing and issue a written determination which is appealable to the Board itself. This decision sets forth the appropriate bargaining unit, or modification of that unit, and is based upon application of statutory unit determination criteria and appropriate case

law to the facts obtained in the investigation or hearing.

Once an initial bargaining unit has been established and an exclusive representative has been chosen, another employee organization or group of employees may try to decertify the incumbent representative by filing a decertification petition with PERB. Such a petition is dismissed if filed within 12 months of the date of voluntary recognition by the employer or certification by PERB of the incumbent exclusive representative. As of June 30, 1990, there were 2,275 bargaining units within PERB's jurisdiction.

ELECTIONS

A primary function of PERB is to conduct representation and organizational security elections. PERB conducts initial representation elections in all cases in which the employer has not granted voluntary recognition. PERB also conducts decertification elections when a rival employee organization or group of employees obtains sufficient signatures to call for an election to remove the incumbent. The choice of "No Representation" appears on the ballot in every election.

In the 1989-1990 reporting period PERB conducted a total of 70 elections covering approximately 77,348 employees. Twenty-one of these elections were to determine which employee organization, if any, would represent the employees

of a particular negotiating unit. Of these 19 elections resulted in the selection of an exclusive representative and 2 in the selection of "No Representation".

The Board conducted 12 decertification elections. Of these, 6 resulted in retention of the incumbent organization, and 6 resulted in the selection of another employee organization as the exclusive representative. Two unit modification elections were also conducted by the Board and two were amendment of certification elections.

Organizational security elections occur in order for employees to approve (under the EERA) or rescind (under the EERA and Ralph C. Dills Act) and organizational security or a fair share fee arrangement. Organizational security election procedures are similar to those followed in representation elections. The Board conducted a total of 30 approval elections and 3 rescission elections in the 1989-1990 reporting period. All elections resulted in the ratification or retention of the organizational security provisions.

Elections procedures are contained in PERB regulations (section 32700 et seq.). The Board agent or the representative of a party to the election may challenge the voting eligibility of any person who casts a ballot. In addition, parties to the election may file objections to the conduct of the election. Challenged ballots and objections are resolved through

procedures detailed in PERB regulations.

IMPASSE RESOLUTION

PERB assists the parties in reaching negotiated agreements through mediation under all three statutes, and then through factfinding under EERA and HEERA, should it be necessary. If the parties are unable to reach an agreement during negotiations, either party may declare an impasse. At that time, a Board agent contacts both parties to determine if they have reached a point in their negotiations where their differences are so substantial or prolonged that further meetings without the assistance of a mediator would be futile.

In cases where there is no agreement of the parties in regard to the existence of an impasse, a Board agent seeks information that helps the Board determine if mediation would be appropriate. Once it is determined that an impasse exists, the State Mediation and Conciliation Service (SMCS) of the Department of Industrial Relations is contacted to assign a mediator. During the 1989-1990 reporting period 340 impasse declarations were filed with PERB. Approximately 85 percent of all such disputes are settled by the mediator, resulting in the need for appointment of a factfinding panel in only 15 percent of all impasse cases.

In the event settlement is not reached during mediation, either party (under EERA or HEERA) may request the implementation of factfinding procedures. If the mediator

agrees that factfinding is appropriate, PERB provides a list of neutral factfinders from which parties select an individual to chair the tripartite panel. If the dispute is not settled during factfinding, the panel is required to make findings of fact and recommend terms of settlement. These recommendations are advisory only. Under EERA, the public school employer is required to make the report public within ten days after its issuance. Under HEERA, publication is discretionary. Both laws provide that mediation can continue after the factfinding process has been completed.

FINANCIAL REPORTS

The law requires recognized or certified employee organizations to file with PERB an annual financial report of income and expenditures. Organizations who have negotiated a fair share fee arrangement, have additional filing requirements. Complaints alleging noncompliance with these requirements may be filed with PERB. PERB may take action to bring the organization into compliance.

BARGAINING AGREEMENTS

PERB regulations require that employers file, with PERB regional offices, a copy of collective bargaining agreements or amendments to those agreements (contracts) within 60 days of the date of execution. These contracts are maintained on file as public records in regional offices.

ADVISORY COMMITTEE

The Advisory Committee to the Public Employment Relations Board was organized in 1980 to assist PERB in the review of its regulations as required by AB 1111. The Advisory Committee consists of over 150 people from throughout California representing employers, employee organizations, law firms, negotiators, professional consultants, the public and scholars. Although the regulation revision has long been completed, the Advisory Committee continues to assist the Board in its search for creative ways in which its professional staff can cooperate with parties to promote the peaceful resolution of disputes and contribute to greater stability in employer-employee relations. This dialogue has aided PERB in reducing case processing time by such improvements as the substitution of less costly investigations in certain public notice cases, the stimulation of innovative research projects of value to the parties, and the suggestion and preparation of further regulatory changes.

A member of the Board attends Advisory Committee meetings. This direct participation with the Advisory Committee ensures communication between the Board and its constituents.

UNFAIR PRACTICES

An employer, employee organization, or employee may file a charge with PERB alleging that an employer or employee organization has committed an unfair practice. Examples of unlawful employer conduct are: coercive questioning of employees regarding their union activity; disciplining or threatening employees for participating in union activities, or promising benefits to employees if they refuse to participate in union activity. Examples of unlawful employee organization conduct are: threatening employees if they refuse to join the union, disciplining a member for filing an unfair practice charge against the union, or an exclusive representative's failure to represent bargaining unit members fairly in the employment relationship with the employer.

In fiscal year 1989-1990, there were 485 unfair practice charges filed. After the charge is filed, a Board agent evaluates the charge and the underlying facts to determine whether a prima facie case of an unfair practice has been established. A charging party establishes a prima facie case by alleging sufficient facts to permit a reasonable inference that a violation of the EERA, Dills Act, or HEERA exists.

If the Board agent determines that the charge fails to state a prima facie case, the Board agent issues a warning letter notifying the charging party of the deficiencies. If the

charge is neither amended nor withdrawn, the Board agent will dismiss it. The charging party may appeal the dismissal to the Board itself.

Investigations by Board agents have been successful in minimizing the issuance of formal complaints in cases involving spurious charges. This has resulted in a savings of time and resources for PERB and the parties. During this fiscal year, investigations were completed in 500 cases. Of these cases, 271 were withdrawn or dismissed at the investigation stage.

If the Board agent determines that a charge, in whole or in part, constitutes a prima facie case, a complaint is issued. During this fiscal year, 173 complaints, 13 complaints/partial dismissals, and 43 complaints/partial withdrawals were issued. Once a complaint is issued, the respondent is given an opportunity to file an answer to the complaint. An ALJ is assigned to the case and calls the parties together for an informal settlement conference. These conferences are scheduled to be held within 30 days of the date the complaint issued. At the informal conference, the parties are free to discuss the case in confidence with the ALJ. If settlement is not reached, a formal hearing is scheduled. During this final year, 156 cases were closed as result of settlement following issuance of the complaint.

If the case proceeds to formal hearing, a different ALJ is

assigned to hear it. Normally, the case is heard within 60 days of the informal conference. At the hearing, the ALJ rules on motions and takes sworn testimony and other evidence which becomes part of an administrative record.

There were 116 days of formal hearing, involving 61 cases this fiscal year.

After the hearing, the ALJ then studies the record, considers the applicable law, and issues a proposed decision. A proposed decision applies precedential Board decisions to the facts of a case. In the absence of Board precedent, the ALJ decides the issue(s) by applying other relevant legal principles. Proposed decisions that are not appealed are binding only upon the parties to the case. There were 64 proposed decisions (including 10 representation case proposed decisions) issued during the fiscal year.

If a party to the case is dissatisfied with a proposed decision, it may file a statement of exceptions and supporting brief with the Board. After evaluating the case, the Board may: (1) affirm the proposed decision; (2) modify it in whole or in part; (3) reverse; or (4) sent the matter back to the ALJ to take additional evidence. Approximately 39 percent of the proposed decisions issued this fiscal year were appealed to the Board itself.

An important distinction exists between (ALJ) proposed decisions that become final

and decisions of the Board itself. Proposed decisions may not be cited as precedent in other cases before the Board. Board decisions are precedential, binding not only on the parties to a particular case, but also serving as guidance for similar issues in subsequent cases.

LITIGATION

This Board is represented in litigation by the General Counsel. The litigation responsibilities of the General Counsel include:

- defending final Board decisions or orders in unfair practice cases when aggrieved parties seek review in appellate courts;

- seeking enforcement when a party refuses to comply with a final Board decision, order or ruling, or with a subpoena issued by PERB;

- seeking appropriate interim injunctive relief against alleged unfair practices;

- defending the Board against attempts to stay its activities, such as complaints seeking to enjoin PERB hearings or elections;

- submitting amicus curiae briefs and other motions, and appearing in cases in which the Board has a special interest or in cases affecting the jurisdiction of the Board.

LITIGATION SUMMARY

During the 1989-1990 fiscal year, PERB opened 21 new superior court, appellate court, and federal district court files. Four decisions were published for certification.

During 1989-1990, eight requests for injunctive relief were received. One request was withdrawn, six requests were denied by the Board, (two by formal Board orders [IR-53 and IR-54], and four by letters of the General Counsel.) The Board granted one request. PERB filed one Request for Temporary Restraining Order on 4/20/90. Preliminary Injunction issued by the court on 5/18/90.

The following are significant cases for this fiscal year:

Cumero v. PERB/King City HSD Assn., King City JUHSD 1st DCA/Div. 3, Case No. A016723 (PERB Dec. No. 197). Issue: Agency fee expenditures, attorney fees. Supreme Court decision filed 9/7/89 reversing 1st DCA and remanding to court to reconsider attorney fees (49 Cal.3d 575). Held, lobbying, ballot proposition campaigns and organizing expenses not chargeable to nonmember employee objectors, affiliation payments chargeable; union bears burden of proof that expenses are properly chargeable; unions may collect fees through involuntary payroll deduction pursuant to a negotiated agreement. Decision final as no Petition for Rehearing filed. Remittitur issued 10/10/89 remanding cause to 1st DCA,

ending Supreme Court proceedings.

United Public Employees, Loc. 790 v. Public Employment Relations Board, San Francisco Community College Dist. (1989) (213 Cal.App.3d 119) Issue: Classified employees of San Francisco Community College District are covered by EERA; overrules that they were employees of the city, not the district, and thus not covered by EERA. Petition for Review by state Supreme Court denied 11/21/89; case remanded to PERB, which issued a new Decision No. 688b (12/20/89), that the district and city are joint employers and that PERB has jurisdiction over unfair practice charges involving classified employees. Case closed.

Johnson, Mahan and Foster v. PERB Sacramento Superior Court No. 507208. Issue: Validity of PERB agency fee regulations. This complaint for declaratory relief, injunction and for relief under the Civil Rights Act of 1871 (42 U.S.C. section 1983) was filed in Sacramento Superior Court on 3/3/89, against the Board and three individual Board members. On 3/26/90, intended decision issued striking concurrent notice alternative in PERB regs. 32992(c)(2) and 32995(a)(2) and granting preliminary summary judgment in declaratory relief. On 6/1/90, Court Order Granting Summary judgment, Denying Summary Judgment, Order Granted on Summary Adjudication of Issues and Judgment.

U.C. Regents v. PERB/California Nurses Assn. Cal. Supreme Court No. S014222, 1st DCA/Div. 2, Case No. AO45488 (1990 Cal. Lexis 1672) (PERB Dec. No. 722-H). Issue: "Technical refusal to bargain" v. unit modification petition as proper procedure to exclude supervisors from bargaining unit. On 2/8/90 Court summarily denied petition. Petitioner filed Petition for Review in California Supreme Court 2/20/90. Supreme Court denied review 4/25/90.

U.C. Regents v. PERB/University Council, AFT Locals, et al. 1st DCA/Div. 2, Case No. AO 45723 (PERB Dec. No. 725-H) (220 Cal.App.3d 346). Issue: Access to internal mail system at five U.C. campuses, reasonable regulations. On 5/16/90 received Order of Court's Opinion Certified for Publication. Opinion to set aside PERB's Dec. and remand for further proceedings.

Abbot v. PERB/San Ramon USD 3rd DCA Case No. C007750 (PERB Dec. No. 751). Issue: Employer's deduction of agency fees in noncompliance with Hudson procedural protection. Briefing stage.

Regents of the University of California v. PERB/Society of Professional Scientists and Engineers (SPSE) 1st DCA/Div. 4, Case No. AO48413 (PERB Dec. No. 783-H). Issue: Access to U.C.'s internal mail system at Livermore Lab where no physical postal routes crossed. Briefing stage.

McFarland USD v. PERB/McFarland Teachers Assn., CTA/NEA 5th DCA, Case No. F013404 (PERB Dec. No. 786). Issue:

Non-reelection of probationary teacher as discrimination. Briefing stage.

Inglewood Teachers Assn. v. PERB/Inglewood USD 2nd DCA/Div. 7, Case No. BO48803 (PERB Dec. No. 792). Issue: Agency relationship between District and principal in filing lawsuit, attorney fees under the "private attorney general" statute (Calif. Code of Civ. Proc., sec. 1021.5). Briefing stage.

PERB v. Vineland Elem. School Dist. Kern County Superior Ct. No. 210424 (IR No. 304/LA-CE-2977). Issue: Unilateral implementation of employee payroll deduction(s) for payment of health insurance premiums before factfinding. On 5/18/90, Court granted PERB's Motion for Preliminary Injunction. On 6/20/90, Defendant filed letter of withdrawal with prejudice.

California School Employees Assn., Chap. 276 v. PERB/Jamestown Elem. School Dist./Jamestown Teachers Assn., CTA/NEA 5th DCA, Case No. F0103809 (PERB Dec. No. 795). Issue: Unilateral change in longevity pay, retaliation, support of competing union in decertification campaign as interference. On 5/17/90, Court ordered stay of ballot count. Briefing stage.

Abbot and Cameron v. PERB/San Ramon Valley Ed. Assn., CTA/NEA 1st DCA, Div. 2, Case No. AO49459 (PERB Dec. No. 802). Issue: Agency fee collection procedures; audit and restitution of fees. Briefing stage.

South Bay Union School Dist. v.
PERB/Southwest Teachers Assn.,
CTA/NEA 4th DCA/Div. 1, Case
No. DO12247 (PERB Dec. No. 791
and 791a). Issue: Did PERB
err by denying Petitioner's
request for reconsideration as
to whether the District refused
or failed to negotiate in good
faith by failing to agree to
allow SWTA to file grievances
in its own name? Briefing
stage.

California Faculty Assn. v.
PERB/California
State University 2nd DCA, Case
No. BO50667 (PERB Dec. Nos.
799-H and 799a-H). Issue: Is
PERB's denial of CFA's motion
to reopen the record erroneous
and an abuse of discretion?
Briefing stage.

THE PERB RESEARCH AND TRAINING PROGRAM

BACKGROUND

Fifteen years have elapsed since the Rodda Act, collective bargaining in public education, was initiated. In that time, PERB has crafted a unique, service-oriented research program. Seeking to be of service to the parties under its jurisdiction, to be responsive to the informational needs of the public, Legislature, and press, and to be responsible in its expenditure of resources, the research projects of PERB have been modest in scope yet multifaceted in purpose and execution. The projects have been of short duration, yet susceptible to long term extension as necessary. They have addressed specific topical needs, yet offer basic behavioral data about the collective bargaining process to policymakers and academicians; and they have encouraged the mutual participation of the parties in the development and direction of the collective bargaining process.

LEGISLATIVE DIRECTION

The statutes which are administered by the PERB are very clear in their mandate to the agency that ongoing research be conducted. The Educational Employment Relations Act provides in Government Code section 3541.3(f) that PERB has the responsibility to conduct research and studies "relating to employee-employer relations, including the collection, analysis, and making available

of data relating to wages, benefits, and employment practices in public and private employment, and when it appears necessary in its judgment to the accomplishment of the purposes of this Chapter, recommend legislation."

REQUEST FOR INFORMATION

Ongoing requests for information received by PERB show that the research mandate of PERB is real and functioning. Legislators and their staff, the Executive Branch of Government, the press, academicians, the public, and organizations representing labor and management frequently request information about the collective bargaining process.

PERB continues to collect a wealth of information regarding collective bargaining. Examples of information routinely collected by PERB include: negotiated agreements, factfinding reports, unfair practice filings, as well as the agency's internal management information system regarding case processing.

Specific legislative enactments which have funded the individual research projects of the agency have emphasized PERB's legislative mandate to conduct research and collect data on the bargaining process. For example, PERB has been instructed by the Legislature to gather basic data with regard to health benefit

expenditures. The Legislature also instructed PERB to collect information regarding the implementation of the provision of the Hart-Hughes School Reform Act (SB 813) which authorized employers to negotiate discipline short of dismissal for certificated employees.

FACTFINDING REPORTS

Reports of the tripartite factfinding panels utilized in the impasse procedures of EERA and HEERA are filed with PERB. Factfinding reports have been available to parties and practitioners by subscription from PERB since its inception, and in addition, PERB has compiled an index to these. The index permits cross-reference of issues, parties and neutrals involved in each report.

UNFAIR PRACTICE AND FILINGS

PERB's unfair practice charges constitute another source of data on the collective bargaining process and the relationships between parties within PERB jurisdictions. PERB decisions on unfair practice filings are indexed, and the index is available to the parties and the public commercially, or by subscription from PERB.

RESEARCH: DESIGNING AND IMPLEMENTING PROJECTS OF MANAGEABLE PROPORTIONS

PERB initiates research studies in an effort to improve the practice of collective bargaining in the public sector and to provide the Legislature and public with a more complete picture of that practice.

PERB's research program is designed to complete small, focused projects through the use of research consultants and inter-agency agreements. Section 3541.3(f) of the Government Code states: "The board may enter into contracts to develop and maintain research and training programs designed to assist public employers and employee organizations in the discharge of their mutual responsibilities under this chapter."

SELECTING RESEARCH EFFORTS

Two major elements have influenced the establishment of research priorities. First, the statute instructs that PERB focus on reports and studies "necessary to the accomplishment of the purposes of the collective bargaining acts." A prime consideration has been to make information available to the parties that would assist the collective bargaining process.

PERB, with the help of its Advisory Committee, identifies research needs that support the parties in conducting bargaining. The second element influencing the choice of research projects is that of fiscal resources available to PERB for research purposes.

HEALTH CARE EXPENDITURES AND COST CONTAINMENT

The State of California, the schools and higher education employers, as has been the case for virtually all other employers in the last decade, have been faced with rapidly increasing health care costs. In an effort to provide

bargaining parties with information about the magnitude of these increases, and more importantly the alternatives to containing costs, with the enactment of SB 922, the Legislature and Governor directed PERB to "collect, analyze, and compare data on health benefits and cost containment in the public and private sectors, and to make recommendations concerning public employees. The recommendations may take into consideration health benefit cost containment issues in public and private employment . . ." PERB conducted surveys from 1984 through 1987, and will conclude this project with a final survey in the fall of 1990.

The results of PERB's Health Care Cost Containment surveys are forwarded to the Legislature under separate cover.

LABOR-MANAGEMENT COOPERATION PROGRAM

New frontiers in the practice of labor relations have been pioneered by the private sector. These efforts have improved product quality and reduced conflict. With approximately 80% of PERB's unfair labor practice caseload originating from only 20% of the governmental agencies under PERB's jurisdiction, PERB has taken a leadership role in examining these methods and introducing them to its constituency.

Under the guidance of the PERB Advisory Committee, PERB conducted a comprehensive survey of its primary education constituency on the topic of

labor-management cooperation. This survey was the first systematic comparison of labor and management views on labor-management cooperation in the public schools, and it provided a substantial source of new information to help PERB design programs to prevent costly labor-management disputes.

With the help of key labor and management representatives, the U.S. Department of Labor, private consultants, academics and private foundations, PERB developed a three-point labor-management program which offers (1) one-day and two-day orientation and training programs; (2) five-day relationship-building workshops; and (3) follow-up facilitation services by trained neutrals to help employers and unions maintain and build upon what they have learned and apply it to specific problems and issues in their districts.

PERB has provided one- and two-day orientation intensives to school districts and unions. Twenty school districts and 29 unions have completed PERB's five-day intensive training program with a total of 283 participants.

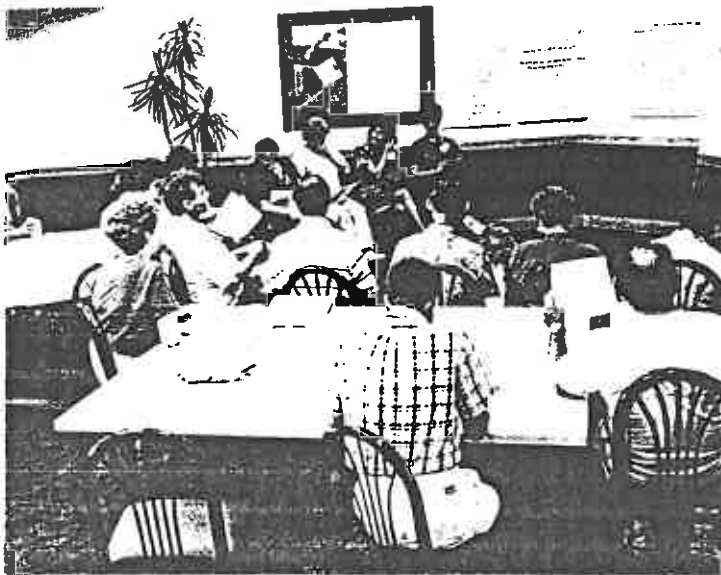
Comments from participants have been very favorable. George J. Jeffers, Superintendent of Schools, San Juan Unified School District said:

I have been actively involved in collective bargaining for over 20 years, working on both the labor and management sides of the table. I believe this training is one of the most

progressive and meaningful efforts to improve labor relations I have ever seen. I have seen a dramatic change in the labor relations climate in the San Juan School District as a direct result of our participation in PERB's training program. We went from a very bad, non-cooperative relationship with our teachers union, to one of working together to come up with solutions to our problems that reflect our mutual dedication to a quality education program. This program is one of the most exciting trends I have seen in education.



Participants in PERB Intensive Training Workshop

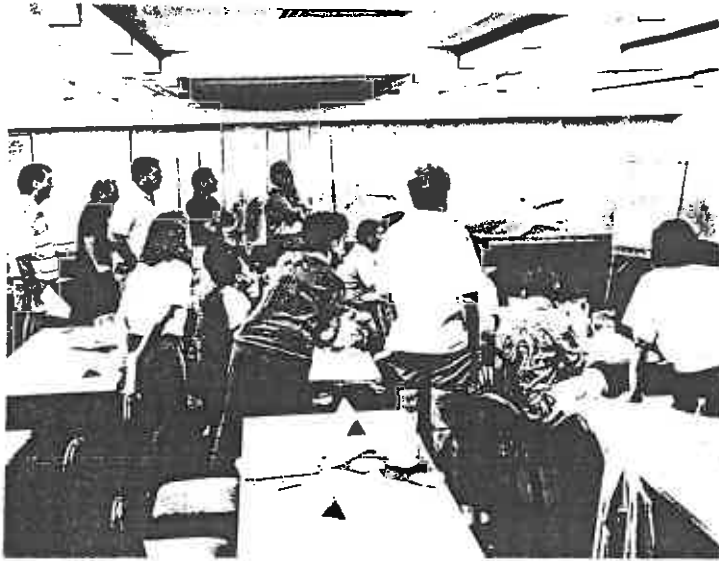


Participants in PERB Intensive Training Workshop

Brian McKenna, Executive Director, San Jose Teachers Association CTA/NEA states:

To emphasize the dramatic change in our relationship, I give you the following brief collective bargaining

history (cites 13 years of multiple impasses, strikes, district bankruptcy, The 1990 bargaining is a whole new experience. The 4-1/2-day intensive training taught us to focus on our interests rather than our positions. This produced a willingness to look at options, to be creative, and to develop common solutions. The 180-degree turn in our relationship allows us to focus primarily on our true mission -- educating children -- and resolving difficulties amicably and quickly. Thank you on behalf of the 1550 teachers and 29,000 students in San Jose Unified.



Participants in PERB Intensive Training Workshop

CREATION OF LABOR-MANAGEMENT COOPERATION NONPROFIT CORPORATION

As part of the 1990-1991 Budget Act, the Legislature directed PERB to "assist, to the extent allowed by law, in the formation of a private, nonprofit corporation dedicated to the promotion and administration of an Improved Employer-Employee Relations Program (IEERP)." The Legislature further directed that:

Effective April 1, 1991, the duties and responsibilities for the IEERP shall be transferred from PERB to the private

non-profit corporation (formed pursuant to California law) established for that purpose. The Public Employment Relations Board is prohibited thereafter from using private or public resources to directly administer the IEERP.

PERB is working with interested parties on the creation of the labor-management cooperation nonprofit corporation, and is exploring how best to assist the corporation after it has been created.

SUMMARY

In developing its research and training goals, PERB has relied heavily upon the expressed need of its immediate constituents - the parties under its jurisdiction as well as the public, administration, and the Legislature. As a result, these goals, when reduced to specific statements of expectation are to ...

- encourage and conduct high quality research in labor-management relations;

- provide a forum for the discussion of labor relations problems and their solutions;

- assist the PERB in rendering improved services to the parties, the public and the executive, legislative, and judicial branches of government;

- improve employer-employee relationships in the

public sector and promote
the peaceful resolution
of employer-employee and
labor-management
disputes; and

develop the public's
interest in labor
relations, and to aid
labor, management, and
the public in obtaining a
better understanding of
their respective
responsibilities under
the laws administered by
PERB.

CASE DIGEST

ADMINISTRATIVE APPEAL DECISIONS

The Regents of University of
California (12/29/89) PERB
Order No. Ad-202-H

The Board reversed the rejection by the Appeals Assistant of an untimely filed document entitled Respondent's Brief in Opposition to Charging Party's exceptions. The Board found good cause for the late filing pursuant to PERB Regulation 32136, based upon the fact that if the document had been mailed by certified or express mail on the same day it was mailed by regular first class mail, it would have been accepted as timely. The explanation for the error, set forth in an unrefuted declaration, was not implausible and the charging party demonstrated no prejudice resulting from the deficiency in the filing.

Apple Valley USD (6/14/90) PERB
Order No. Ad-209

The Board overruled Alum Rock Union Elementary School District No. Ad-158, holding that a contract, to act as a bar to a decertification petition, must be long enough to create its own window period (i.e., at least 120 days). Therefore, the three-month contract extension agreed to by the District and California School Employees' Assn., Chapter No. 653 did not bar the decertification petition filed by Apple Valley Classified Employees Assn., CTA/NEA. The Board also held that the initials of negotiators are

sufficient to meet the requirement that, to act as a bar, a contract must be "signed."

INJUNCTIVE RELIEF DECISIONS

Santa Maria Joint Union High School District (11/2/89) PERB
Order No. IR-53

Citing PERB v. Modesto City Schools (1982) 136 Cal.App.3d 881, the Board held that a pre-impasse strike constituted reasonable cause to believe that an unfair practice had occurred. Per Sacramento City USD (1987) PERB Decision No. IR-49, a pre-impasse strike creates a rebuttable presumption of refusal to bargain in good faith. The presumption was not refuted. Second, the just and proper standard was not met in view of the union declaration, under penalty of perjury, that it had "no plan, intention or desire to strike again."

Fremont Unified School District (5/15/90) PERB ORDER
No. IR-54

Citing the two prong rule from PERB v. Modesto City Schools (1982) 136 Cal.App.3d 881, the Board held: (1) The "reasonable cause" prong was satisfied in this case; the post-impasse intermittent strike activity was both unprotected and unlawful. The ability of the union to, "... pick and choose" when they worked, without consequence, constituted a refusal or failure to meet and negotiate in good faith. (2) The "just and proper" standard was not

satisfied due to the failure to demonstrate, by competent evidence, the impact of the activity in question upon negotiations.

REPRESENTATION AND UNFAIR PRACTICE CHARGE DECISIONS

California Correctional Peace Officers Association (Colman)
(7/25/89) PERB Decision No. 755-S

The Board reviewed exceptions to the ALJ's determination that CCPOA acted unreasonably in suspending an individual's membership. The exceptions discussed were primarily procedural. The Board found that testimony concerning the intent of the bylaws is relevant only if ambiguity exists. Transcripts of a disciplinary hearing and prehearing settlement conference were properly excluded since they could not cure unfairness. The ALJ properly determined that CCPOA failed to conduct a fair hearing when it considered evidence of misconduct occurring two months after charges were filed and the member was given no notice that the evidence would be used.

The ALJ's decision contained conclusions of law adopted by the Board. He rejected CCPOA's contentions that: (1) SEIU - Local 99 (Kimmett) (1979) PERB Decision No. 106 limits the Board's inquiry to cases which have a substantial impact on the employment relationship, and (2) CSEA - Chapter 381 (Parisot) (1983) PERB Decision No. 280 requires a showing of unlawful motivation when inquiring into whether a union disciplinary proceeding is

"reasonable." Rather, the ALJ found that proof of motivation was unnecessary as the union procedures interfered with employee rights by unreasonably excluding the employee from union membership.

Carlsbad Unified School District (11/21/89) PERB
Decision No. 778

On remand from the Court of Appeals, the Board ruled that under the facts of this case, a transfer to a confidential position was not a promotion. The Board also found that an employer should be given "broad discretion" in filling a confidential position vis a vis a potential employee candidate's protected activity. Thus, an employer may, under EERA, consider past protected activity when selecting an employee for a confidential position. Based on the facts of this case, the District did not improperly exercise its broad discretion in deciding not to appoint an employee to a confidential position. The Board found that the District's statements that an employee could not serve on the negotiating committee were corrected and that any harm to the employee was de minimis and thus not a violation.

Regents of the University of California (12/29/89) PERB
Decision No. 783-H

The Board summarily adopted the ALJ's finding of a violation based on denial of access to the internal mail system at Lawrence Livermore Laboratory. It also denied both parties' request for attorneys' fees because neither party's arguments were "without

arguable merit" nor were they made in bad faith. The ALJ's decision found that the University violated the statute by denying the union use of the internal mail system. Circulation of the internal mail did not cross postal routes and therefore was outside coverage of the private express statutes. University arguments, that circulation of the mail would burden the system and that the union had other means of communications, were rejected. The right of access extends to each statutorily recognized method of communication and alternative methods are relevant only when a particular means is shown to be disruptive or burdensome. A petition for review is pending.

McFarland Unified School District (1/3/90) PERB Decision No. 786

The Board upheld the ALJ's finding that the District had violated EERA section 3543.5(a) by (1) issuing a letter of reprimand in response to a probationary teacher's protected activity and (2) not reelecting her to a third school year because of the protected activity. The Board upheld the remedy of reinstatement retroactive to the commencement of what would have been the teacher's third school year. The remedy had the effect of granting tenure to the discriminatee. On exceptions to the Board, the District contended that it was entitled to deny permanent status without any justification, that it had satisfied its burden under Novato USD (1982) PERB Decision No. 210, and that the ALJ had

misinterpreted the facts. The Board noted that probationary teachers do not have the same protection as tenured teachers under the Education Code. However, where a charge is filed alleging that the decision not to reelect was based on protected activity, the Board will apply Novato. In doing so, the Board found that the District failed to establish that it would have taken the same action absent the protected activity. A writ of extraordinary relief is pending.

State of California, Department of Personnel Administration (1/11/90) PERB Decision No. 787-S

In this case the Department of Personnel Administration filed five unit modification petitions seeking to exclude seasonal lifeguards on the grounds that they are not state employees under the Dills Act. DPA relied on Unit Determination for the State of California (1981) PERB Decision No. 110-S, wherein certain employees were found not to be covered by the Dills Act because they lacked certain indicia of civil service employee status. Agreeing with CAUSE, the Board determined that PERB Decision No. 110-S required an unconstitutional interpretation of the Dills Act. Interpreting the Dills Act in a way as to preserve its constitutionality, the Board determined that the reference to civil service employees in Government Code section 3513(c) includes all employees in state service, unless specifically exempted by section 4 of Article 7 of the Constitution. Seasonal lifeguards are not so

exempted. The unit modification petitions were dismissed.

South Bay Union School District
(2/8/90) PERB Decision No. 791

During contract negotiations the Southwest Teachers Association, CTA/NEA proposed changes in the agreement to permit the Association to file and prosecute any contractually-based grievance in its own name. The District refused to change its position and sought to retain language in the agreement which limited the Association's right to file grievances and maintained this position to impasse.

The Board found that the Association's ability to file and process grievances in its own name satisfied the first two prongs of the Anaheim test (Anaheim Union HSD (1981) PERB Decision No. 177): the subject is reasonably related to procedures for grievance processing and, as is obvious from this litigation, the subject is of such concern to both management and employees that conflict is likely to occur and collective negotiations would be an appropriate method of resolving the conflict. The third prong of the Anaheim test was modified and not met. Requiring the exclusive representative to negotiate its right to process grievances in its own name would "significantly abridge the organization's freedom to exercise those representational prerogatives essential to the achievement of the organization's mission as exclusive representative" Limits on the ability to grieve

contract violations fundamentally alter the concept of collective action. Thus the subject is not a mandatory subject of bargaining. Therefore, the District's insistence to impasse that the exclusive representative give up its right to grieve constituted a per se violation of EERA section 3543.5(c). A writ of review is pending.

Inglewood Unified School District
(2/15/90) PERB Decision No. 792

The Board upheld the ALJ's findings that (1) the District retaliated against two teachers for acting in concert regarding their coaching stipends in violation of EERA section 3543.5(a), and (2) the District violated 3543.5(c), (a) and (b), by unilaterally changing established practice for dismissing teachers from their extra-duty assignment as coaches without just cause.

The Board reversed the ALJ's finding that the District violated EERA section 3543.5(a) based on District Principal Freeman prosecuting a civil lawsuit against the Association and various Association members. The Board found that the ALJ's finding of an agency relationship was misplaced because of reliance on Antelope Valley Community College District (1979) PERB Decision No. 97.

The Board examined Antelope and found that the decision was decided by two members of the Board, when the Board consisted of only three members. Although the two members (Chairperson Gluck and Member Gonzales) agreed that an agency

relationship did not exist on the facts of that case, they disagreed on the rule. Thus, Antelope, supra, did not establish a precedent.

The Board then found that the approach of Member Gonzales was more reasoned than that of Chairperson Gluck and analyzed this case under the apparent authority doctrine.

The Board found, that although Freeman is an actual agent of the District, the Association did not prove that he was acting within the scope of his authority when he filed the lawsuit. The Association produced no evidence to show that the District gave Freeman express authority to file a civil lawsuit, and the Board was unwilling to find that such authority may be implied from the fact of Freeman's employment as principal. The Board stated that to prove ostensible or apparent authority, the Association must establish representation by the District, justifiable reliance by the party seeking to impose liability on the District, and a change in position resulting from that reliance.

The facts, that Freeman was the principal of the high school, that he was not getting along with the teachers or the Association, and that he filed a lawsuit against them, were insufficient to support a finding of agency relationship. A writ of review is pending.

California Faculty Association
(2/16/90) PERB Decision No. 793-H

The California State University (CSU) appealed a regional

attorney's dismissal of its allegation that the California Faculty Association violated HEERA section 3571.1(c) and (d) by making a fact finding report public prior to the expiration of the ten-day confidentiality period provided by HEERA section 3593. The Association released a copy of the fact finding report, selected quotes from the report, and sent a memorandum to members of CSU's Board of Trustees (trustees) and each of CSU's campus presidents.

The Board affirmed the regional attorney's dismissal. On appeal CSU conceded that the trustees are parties and, thus, no violation occurred as a result of the Association sending copies of the fact finding report to individual trustees. The Board also found the campus presidents to be agents of CSU, therefore the information given to them was not made "public" within the meaning of HEERA section 3593.

State of California,
Department of Personnel
Administration (2/22/90) PERB
Decision No. 794-S

The California State Employees' Association sought a unit modification to alleviate a conflict between Unit 3 members who teach or serve as librarians in state institutions, and those Unit 3 members who work as consultants and field representatives for the Department of Education, librarians who do not work in institutions, state archivists and instructors at the California Maritime Academy. The state argued the classifications currently represented in Unit 3 have a

sufficient community of interest to remain in the same unit.

The Board found that the units petitioned for are more appropriate than the existing Unit 3 because the members of Unit 3 do not necessarily share concern on issues of class size, safety conditions and professional development. The record reflected that the consultants and institutional teachers do not perform functionally related services. Institutional employees teach both academic and vocational classes directly to students, who have emotional handicaps, mental problems, or require special supervision; while consultants monitor school districts for compliance with state and federal requirements.

Calexico Unified School District (3/29/90) PERB Decision No. 800

The Board reversed the Board agent's decision in a unit modification petition regarding a confidential employee. The Board rejected the Board agent's conclusion that the existence of confidential duties was too speculative because there was insufficient evidence that the employee actually performed any of the confidential duties in her job description. The Board reviewed the job description and the confidential status of the employee's supervisor and found that evidence to be sufficient.

San Ramon Valley Education Association (CTA/NEA) (Abbot, Cameron) (3/29/90) PERB Decision No. 802

In this case, two teachers tested the constitutionality of the agency fee/rebate procedures of the San Ramon Valley Education Association (SRVEA), an affiliate of CTA/NEA. It should be recognized that the procedures at issue predate PERB's agency fee regulations. The Board made the following rulings: SRVEA violated EERA section 3543.6(b) by:

(1) Failing to provide any local financial information to potential nonmember objectors, and instead relying on CTA's financial information; (use of a "local presumption," e.g., its adoption of statewide association's percentage of properly chargeable expenditures was not unlawful, provided that SRVEA provided an end-of-year financial report showing chargeable expenditures incurred);

(2) Utilizing documentation from CTA that did not provide sufficient supporting materials to enable a nonmember to make a determination as to whether or not to object;

(3) Failing to provide sufficient indication that NEA's supporting financial statements were verified by an independent auditor;

(4) Failing to provide those challenging objectors who requested an arbitration with an immediate refund of nonchargeable expenses; and

(5) Failing to establish an escrow account that would restrict the union's access to challenged agency fee funds prior to arbitrator's determination of appropriate percentages to be refunded to objecting nonmembers. A writ of review is pending.

United Teachers-Los Angeles
(3/30/90) PERB Decision No. 803

The Board affirmed the ALJ's proposed decision finding that the UTLA teachers' boycott of certain job duties during negotiations and impasse procedures violated EERA sections 3543.6(c) and (d). The Board first acknowledged that UTLA's authorization of the boycott was not an issue. The Board then reasoned that employees' partial withholding of mandatory services is unlawful; nor can employees lawfully withhold discretionary duties, if they are withheld for reasons other than their professional judgment. Only duties which are purely voluntary may be lawfully withheld. The boycott began during the parties' negotiations and continued during their participation in impasse procedures; the evidence generally showed that it was used to pressure the District to accept the union's contract demands. Further, the union did not contend that the District failed to negotiate in good faith and its boycott activities were in response thereto. Thus, a violation of EERA was found.

State of California
(Department of Parks and Recreation) (6/4/90) PERB Decision No. 810-S

Following State of California (California Department of Forestry and Fire Protection) (1989) PERB Decision No. 734-S, PERB held that because denial of an employee's request for representation violated both employee rights and organization rights, and the collective bargaining agreement only prohibited violation of employee rights, only subdivision (a) charges should be dismissed and deferred to arbitration and subdivision (b) charges should not.

South Bay Union School District
(6/4/90) PERB Decision No. 815

The Board reversed dismissal of an unfair practice charge, in part, holding a statement involving strike preparation activities stated a prima facie case and that the Association refused to participate in good faith in the impasse procedures in violation of EERA section 3543.6(d). Using the totality of circumstances test, the facts alleged, including a strike threat and strike preparation activities, constituted sufficient facts to state a prima facie violation of EERA section 3543.6(d).

The Board found that the regional attorney properly dismissed the misrepresentation allegations, but did not adopt the analysis. Rather, the Board held that the standard established in Rio Hondo Community College District (1980) PERB Decision No. 128 was equally applicable to employer and employee

organizations, and the alleged misrepresentations of District bargaining positions did not state a prima facie case as they failed to constitute either a threat of reprisal or promise of benefit.

State of California, Dept. of
Personnel Administration
(6/29/90) PERB Decision No.
823-S

The Board upheld an ALJ'S decision to dismiss the charges of bad faith bargaining against the state. The Board rejected an attempt to link the signing of a final state budget with the negotiations of a new collective bargaining agreement. The failure of the state to make a firm salary proposal for approximately a month-and-a-half after the adoption of the final state budget does not constitute a per se violation of the statute. In addition, it found no violation based on the totality of circumstances because ground rules were agreed upon promptly, negotiations were scheduled and regularly held, counter proposals were presented at bargaining sessions, and the parties reached tentative agreement on several issues at various points in the bargaining process, contract extensions were granted to keep the memorandum of understanding in place during negotiations and the employer agreed to increase health benefit contributions during negotiations to limit employees' out-of-pocket expenses for this benefit. Accordingly, the state did not bargain in bad faith. A writ of review is pending.

1989/90 REQUESTS FOR INJUNCTIVE RELIEF

IR#	CASE NAME	CASE NO.	ALLEGATION	FILED	DISPOSITION
299	San Jose USD v. San Jose Teachers Assn.	SF-CO-367	Threatening strike.	8/31/89	Denied without prejudice 9/1/89.
300	Santa Maria Joint UHSD v. Santa Maria HSD Faculty	LA-CO-500	Threatening strike.	10/25/89	Denied without prejudice 11/2/89. Board Dec. IR-53.
301	Charter Oak Educators Assoc. v. Charter Oak USD	LA-CE-2920	Unilateral change. Bad faith bargaining.	1/26/90	Denied without prejudice 2/1/90.
302	Fremont USD v. Fremont USTA	SF-CO-380	Post-impasse strike without advance notice.	3/7/90	Denied without prejudice 3/9/90.
303	CSEA v. California State University	LA-CE-269-H	Reprisal, refusal to process safety grievance.	4/3/90	Withdrawn 4/3/90.
304	Vineland Teachers Assn. v. Vineland ESD	LA-CE-2977	Unilateral change of health insurance benefits.	4/11/90	PERB filed Req. for TRO 4/20. Prelim. Inj. issued 5/18/90.
305	San Ramon Valley USD v. San Ramon Valley Ed. Assn.	SF-CO-394	Post-impasse strike without notice.	4/26/90	Denied without prejudice 5/4/90.
306	Fremont USD v. Fremont Teachers Assn.	SF-CO-380	Post-impasse strike.	5/7/90	Denied without prejudice 5/11/90. Board Dec. IR-54.

TOTAL ACTIVITY
(EERA - HEERA - RALPH C. DILLS ACT)
REPRESENTATION CASE ACTIVITY
Fiscal Year 1989/90

	<u>Active as of 6/30/89</u>	<u>Cases Filed</u>	<u>Total Active Cases</u>	<u>Closed Cases</u>	<u>Active as of 6/30/90</u>
REPRESENTATION PETITIONS	26	48	74	56	18
DECERTIFICATION PETITIONS	13	16	29	23	6
UNIT MODIFICATION PETITIONS	57	58	115	95	20
ORGANIZATIONAL SECURITY PETITIONS	4	32	36	28	8
AMENDED CERTIFICATIONS	5	15	20	15	5
MEDIATION	126	340	466	278	188
FACTFINDINGS	13	48	61	42	19
ARBITRATIONS	2	4	6	4	2
PUBLIC NOTICE COMPLAINTS	1	9	10	5	5
COMPLIANCE	23	28	51	23	28
FINANCIAL STATEMENTS	0	1	1	0	1
OTHER	1	5	6	2	4
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TOTAL	271	604	875	571	304

EERA - HEERA - RALPH C. DILLS ACT
UNFAIR PRACTICE CASE ACTIVITY - STAFF
Fiscal Year 1989/90

	Active as of <u>7/1/89</u>	Cases <u>Filed</u>	Closed <u>Cases</u>	Active as of <u>6/30/90</u>
<u>EERA</u>				
CE	177	276	268	185
CO	70	119	73	116
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
TOTAL	247	395	341	301

<u>HEERA</u>				
CE	36	37	38	35
CO	4	5	6	3
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
TOTAL	40	42	44	38

<u>RALPH C. DILLS ACT</u>				
CE	30	33	44	19
CO	23	15	28	10
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
TOTAL	53	48	72	29

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<u>TOTAL</u>				
CE	243	346	350	239
CO	97	139	107	129
=====				
GRAND TOTAL	340	485	457	368

NOTE: "CO" means charge against the Employee Organization
"CE" means charge against the Employer

TOTAL FILINGS - BY ACT
UNFAIR PRACTICE CASES
Fiscal Year 1989/90

CE's

	<u>EERA</u>	<u>HEERA</u>	<u>RALPH C. DILLS</u> <u>ACT</u>	<u>TOTAL</u>
JULY	12	2	4	18
AUGUST	24	3	2	29
SEPTEMBER	24	3	3	30
OCTOBER	23	6	1	30
NOVEMBER	22	5	4	31
DECEMBER	31	0	4	35
JANUARY	21	4	2	27
FEBRUARY	24	3	1	28
MARCH	26	2	2	30
APRIL	30	4	0	34
MAY	18	3	4	25
JUNE	21	2	6	29
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TOTAL	276	37	33	346

CO's

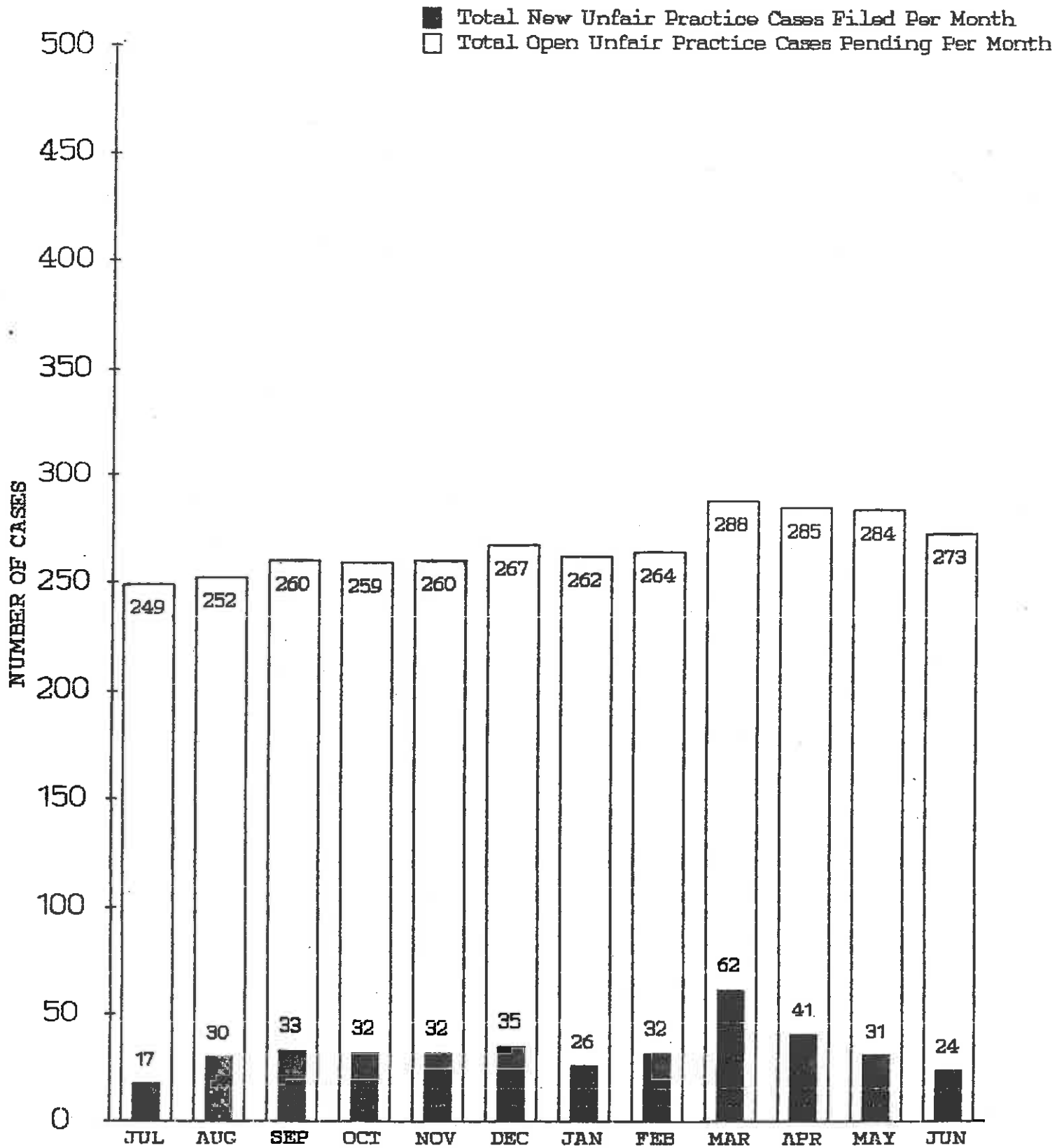
	<u>EERA</u>	<u>HEERA</u>	<u>RALPH C. DILLS</u> <u>ACT</u>	<u>TOTAL</u>
JULY	5	1	1	7
AUGUST	6	1	2	9
SEPTEMBER	9	0	2	11
OCTOBER	9	0	1	10
NOVEMBER	10	0	1	11
DECEMBER	4	1	2	7
JANUARY	5	1	0	6
FEBRUARY	8	0	0	8
MARCH	36	0	0	36
APRIL	11	0	4	15
MAY	13	0	1	14
JUNE	3	1	1	5
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TOTAL	119	5	15	139

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GRAND TOTAL	395	42	48	485
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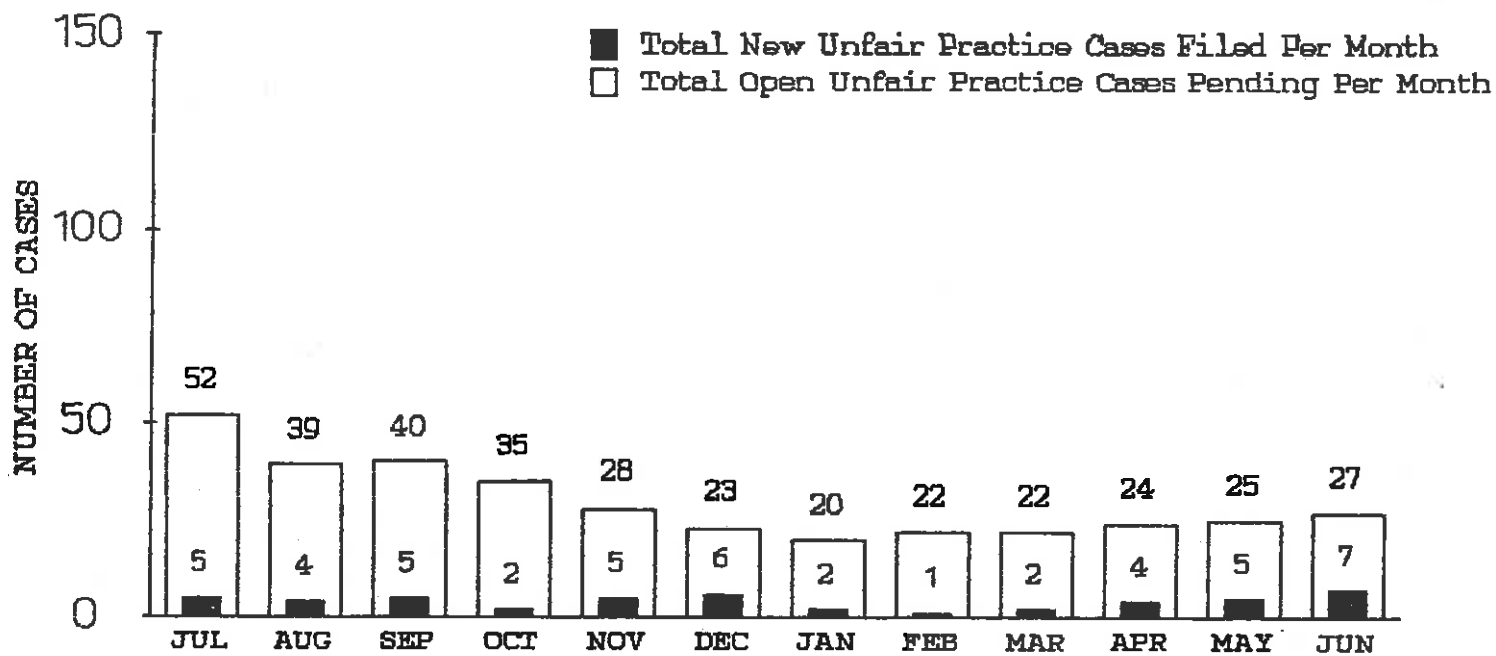
EERA

UNFAIR PRACTICE CASELOAD CHART - FISCAL YEAR 1989/90



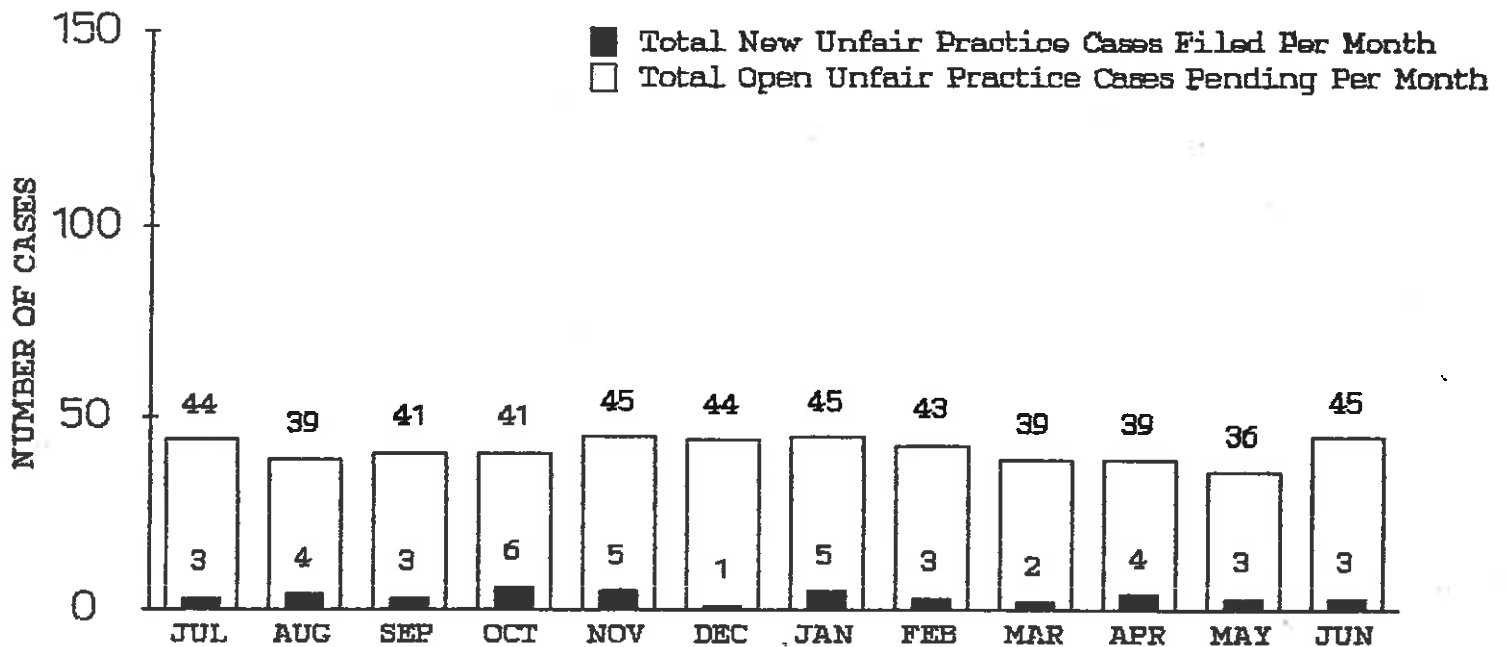
RALPH C. DILLS ACT

UNFAIR PRACTICE CASELOAD CHART - FISCAL YEAR 1989/90



HEERA

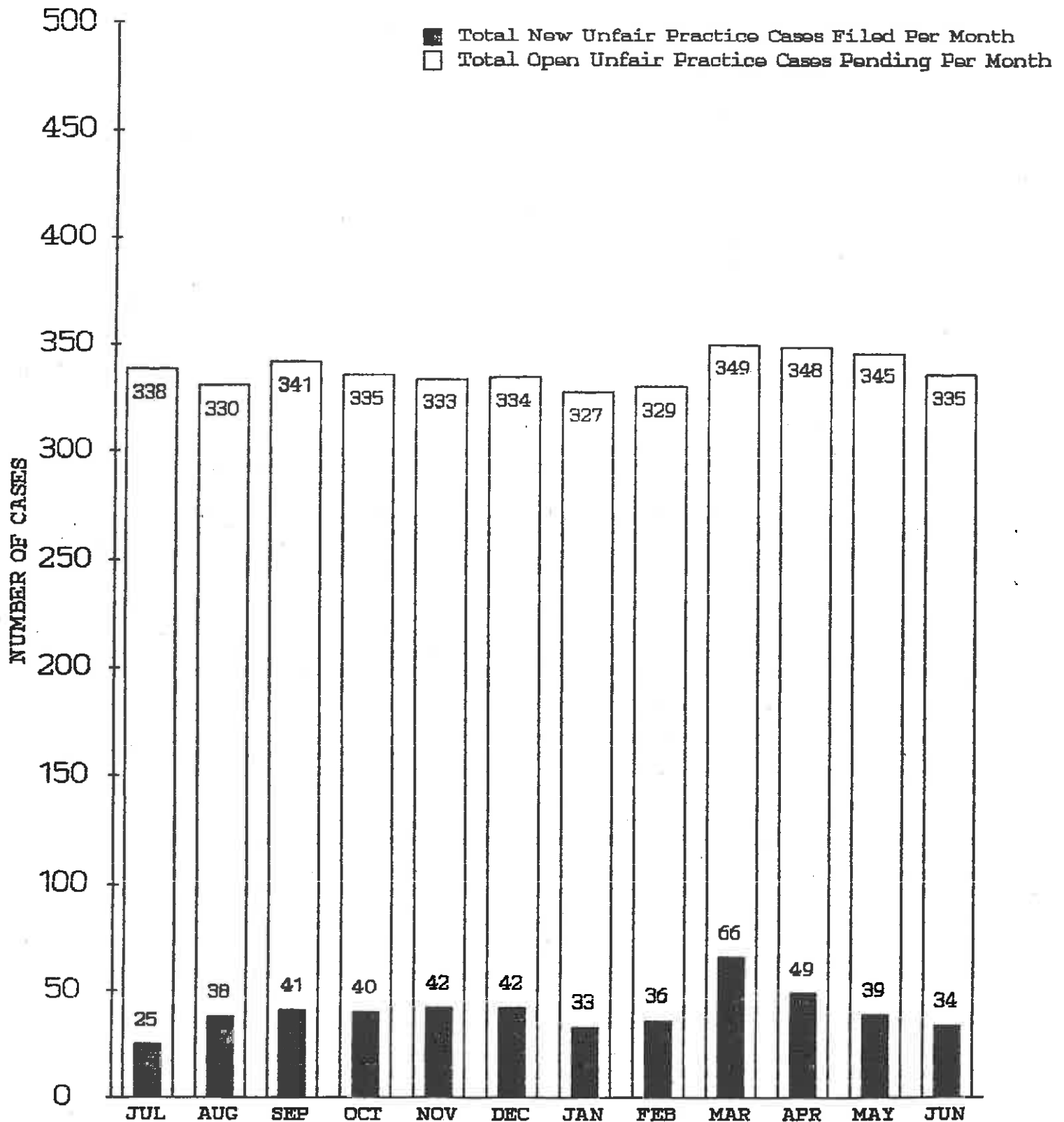
UNFAIR PRACTICE CASELOAD CHART - FISCAL YEAR 1989/90



TOTAL OF ALL ACTS

(EERA - HEERA - RALPH C. DILLS ACT)

UNFAIR PRACTICE CASELOAD CHART - FISCAL YEAR 1989/90



ABBREVIATIONS TO ELECTIONS HELD

AFA	All Faculty Association
AFSCME	American Federation of State, County and Munincipal Employees
AFT	American Federation of Teachers
AVC Fed. Class	Antelope Valley College Federation of Classified Employees
BHEA	Beverly Hills Education Association
CALPRO	California Professional Education Employees
CARPCLASSCLUB	Carpinteria Classified Club
Chg	Change in Identification of Exclusive Representative
CSEA	California School Employees Association
CTA	California Teachers Association
IAMAW	International Association of Machinists and Aerospace Workers
No Chg	No Change in Identification of Exclusive Representative
NavTecTrgInst	Naval Technical Training Instructors
Oak Park Class	Oak Park Classified Association
PFA/CWA	Part-Time Faculty Association/Communication Workers of America
SCENT	Sonoma County Employees Negotiations Team
SEIU	Service Employees International Union

EERA ELECTIONS HELD - FISCAL YEAR 1989/90

1989/90 TALLY DATE	CASE NOS.	EMPLOYER NAME	UNIT TYPE	UNIT SIZE	VALID VOTES	ORG WITH MAJORITY	OTHER ORG	OTHER ORG	NO REP	CHALG BALLOT	VOID BALLOT	TYPE OF ELECT
2/9/90	SF-AC-20	San Francisco USD	CERT	3837	2492	Chg-2378	No Chg-114		0	0	25	C/REP
2/9/90	SF-AC-21	San Francisco USD	CLS	2160	745	Chg-709	No Chg-36		0	0	28	C/REP
8/22/89	SF-D-177	Las Lomitas ESD	CLS	8	8	CSEA-5	AFSCME-3		0	0	0	C/REP
9/21/89	LA-D-238	Carpinteria USD	CLS	125	83	CSEA-54	CARPCLASSCLUB-28		1	1	0	D/REP
10/16/89	LA-D-244	Beverly Hills USD	CLS	55	42	BHEA-28	CSEA-14		0	0	1	C/REP
11/13/89	SF-D-181	Fairfield-Suisun USD	CLS	325	245	CSEA-137	CALPRO-98		10	0	3	C/Rep
12/5/89	SF-D-180	Solano COE	CLS	21	21	IAMAW-16	CSEA-4		1	0	0	C/REP
12/12/89	SF-D-183	Salinas UnHSD	CERT	420	398	AFT-240	CTA-157		1	0	0	C/REP
2/6/90	SF-D-182	Mendocino COE	CLS	119	74	SCENT-38	CSEA-34		2	0	2	C/REP
4/23/90	LA-D-243	Inglewood USD	CLS	592	351	CALPRO-187	CTA-98	CSEA-60	6	1	17	D/REP
5/17/90	S -D-127	Dos Palos JtUnHSD	CLS	34	33	CSEA-18			15	0	1	C/REP
6/5/90	LA-D-248	Antelope Valley CCD	CLS	356	278	AFT-141	CTA-123		14	0	1	C/REP
6/18/90	LA-D-247	Pasadena USD	CLS	712	445	CSEA-333	Teamsters-94		18	0	3	C/REP
6/22/90	LA-D-246	Downey USD	CLS	156	117	CALPRO-63	CSEA-54		0	1	3	D/REP
9/25/89	LA-R-951	Fontana USD	CLS/SPV	61	54		Teamsters-20		34	5	0	C/REP
9/27/89	LA-R-957	Antelope Valley CCD	CLS	62	52	AVC Fed. Class-35			17	1	0	C/REP
9/28/89	LA-R-954	Oak Park USD	CLS	46	41	Oak Park Class-35			6	0	0	C/REP
10/18/89	LA-R-953	Snowline JtUSD	CERT	193	154		CTA-73		81	0	1	C/REP
11/7/89	S -R-866	Cottonwood UnESD	CERT	43	43	CTA-24	AFT-16		3	0	0	C/REP
11/7/89	SF-R-700	Sonoma County Jr College	CERT	1348	878	AFA-477	AFT-401		0	26	8	C/REP
11/21/89	SF-R-703	Roseland ESD	CLS	57	31	CSEA-19			12	0	3	C/REP
12/5/89	S -R-867	Palermo UnSD	CERT	56	51	CTA-32			19	0	0	C/REP
12/27/89	S -R-836	Butte CCD	CERT	847	446	PFA/CWA-291	CTA-124		31	2	1	C/REP
1/17/90	S -R-869	Washington UnHSD	CLS	37	33	CSEA-29			4	1	2	C/REP
1/18/90	LA-R-955	Beardsley ESD	CLS	114	92	CSEA-55			37	6	0	C/REP
2/1/90	LA-R-960	Rio Bravo-Greeley UnESD	CLS	18	14	CSEA-14	CTA-0		0	0	1	C/REP
2/7/90	LA-R-962	San Diego CCD	CERT	158	135	NavTecTrgInst-128			7	0	0	C/REP
2/20/90	LA-R-916	Long Beach CCD	CERT	687	423	CTA-391			32	8	3	C/REP
3/20/90	LA-R-963	Santa Clarita Vly SchFdSv	CLS	42	30	CSEA-30			0	0	0	C/REP
4/18/90	S -R-879	Salida UnSD	CLS	59	46	CSEA-37			9	0	3	C/REP
4/26/90	LA-R-965	Eastside UnESD	CLS	60	53	CSEA-46			7	0	1	C/REP
5/31/90	S -R-882	Dunsmuir ESD	CERT	21	20	CTA-16			4	0	0	C/REP
6/7/90	S -R-884	Live Oak USD	CLS	73	58	CSEA-38			20	0	0	C/REP
9/27/89	S -S-125	Cascade UnESD	CLS	6	5	Teamsters-4	CSEA-1		0	0	0	C/REP
9/27/89	S -S-125	Cascade UnESD	CLS	35	31	Teamsters-22	CSEA-9		0	0	0	C/REP
4/19/90	LA-UM-487	El Monte ESD	CLS	13	8	CSEA-8			0	0	0	C/REP
5/30/90	SF-UM-441	San Francisco USD	CLS	9	9	SEIU-5	LABORERS-4		0	0	0	C/REP

EERA ORGANIZATIONAL SECURITY ELECTIONS - FISCAL YEAR 1989/90

1989/90 TALLY DATE	CASE NOS.	EMPLOYER NAME	UNIT TYPE	UNIT SIZE	VALID VOTES	OTHER ORG QS-YES	OTHER ORG QS-NO	NO REP	CHALG BALLOT	VOID BALLOT	TYPE OF ELECT
9/12/89	S -OS-76	Shasta UnHSD	CLS	75	45	YES-27	NO-18	0	0	0	C/REP
9/12/89	S -OS-75	Shasta UnHSD	CLS	66	47	YES-34	NO-13	0	0	0	C/REP
10/20/89	SF-OS-137	City of Santa Rosa ESD/HSD	CERT	730	617	YES-469	NO-148	0	0	1	C/REP
11/8/89	S -OS-77	Enterprise ESD	CERT	142	118	YES-87	NO-31	0	0	0	C/REP
11/21/89	SF-OS-138	Belmont ESD	CERT	91	54	YES-43	NO-11	0	0	0	C/REP
12/7/89	SF-OS-139	Hayward USD	CLS	168	96	YES-77	NO-19	0	0	1	C/REP
12/13/89	LA-OS-119	Los Angeles	CERT	36791	1371	YES-14362	NO-7009	0	140	569	C/REP
12/28/89	LA-OS-120	El Monte ESD	CERT	501	320	YES-264	NO-56	0	0	5	C/REP
1/18/90	SF-OS-141	Jefferson UnHSD-San Mateo	CLS	140	108	YES-94	NO-14	0	0	0	C/REP
1/18/90	SF-OS-142	Jefferson UnHSD-San Mateo	CERT	250	232	YES-146	NO-86	0	1	0	C/REP
1/30/90	SF-OS-140	San Leandro USD	CLS	200	139	YES-99	NO-40	0	0	0	C/REP
2/16/90	LA-OS-121	Monrovia USD	CERT	290	211	YES-160	NO-51	0	2	3	C/REP
2/27/90	SF-OS-143	Napa Valley USD	CERT	641	430	YES-322	NO-108	0	0	10	C/REP
3/1/90	LA-OS-122	Brawley UnHSD	CERT	74	35	YES-25	NO-10	0	0	0	C/REP
3/19/90	SF-OS-144	City of Santa Rosa ESD/HSD	CLS	480	247	YES-174	NO-73	0	0	6	C/REP
4/25/90	LA-OS-124	Ontario-Montclair ESD	CLS	777	348	YES-258	NO-90	0	0	0	C/REP
5/1/90	LA-OS-130	Bonita USD-Los Angeles	CERT	423	269	YES-216	NO-53	0	0	0	C/REP
5/16/90	LA-OS-125	Paramount USD	CERT	650	440	YES-339	NO-101	0	0	0	C/REP
5/17/90	LA-OS-123	La Mesa-Spring Valley SD	CERT	645	421	YES-299	NO-122	0	0	0	C/REP
5/17/90	LA-OS-134	Glendora USD	CERT	250	243	YES-200	NO-43	0	2	0	C/REP
5/22/90	SF-OS-145	Oak Grove ESD-Santa Clara	CLS	190	98	YES-71	NO-27	0	0	0	C/REP
6/6/90	S -OS-78	Sacramento City USD	CLS	13	9	YES-7	NO-2	0	0	0	C/REP
6/6/90	S -OS-79	Sacramento City USD	CLS	881	495	YES-388	NO-107	0	0	8	C/REP
6/6/90	S -OS-80	Sacramento City USD	CLS	884	490	YES-362	NO-128	0	0	9	C/REP
6/6/90	S -OS-81	Sacramento City USD	CLS	471	313	YES-190	NO-123	0	0	2	C/REP
6/6/90	S -OS-82	Sacramento City USD	CLS/SPV	93	58	YES-46	NO-12	0	0	0	C/REP
6/18/90	LA-OS-131	Hemet USD	CERT	525	357	YES-252	NO-105	0	0	1	C/REP
6/18/90	LA-OS-132	Hemet USD	CERT/SPV	408	180	YES-127	NO-53	0	0	0	C/REP
6/19/90	LA-OS-128	Los Angeles USD	CLS	8072	4336	YES-3833	NO-503	0	2	96	C/REP
6/20/90	LA-OS-129	Los Angeles USD	CLS	8985	4066	YES-3566	NO-500	0	1	129	C/REP
6/7/90	LA-OS-126	Santa Monica Malibu USD	CLS	155	112	YES-67*	NO-45*	0	0	1	C/REP
6/7/90	LA-OS-127	Santa Monica Malibu USD	CLS	119	98	YES-37*	NO-61*	0	0	0	C/REP
6/7/90	LA-OS-135	Santa Monica Malibu USD	CLS	203	69	YES-50*	NO-19*	0	0	0	C/REP

* Voting was to determine whether or not to rescind the current organizational security agreement.

RALPH C. DILLS ACT ELECTIONS HELD - FISCAL YEAR 1989/90

None

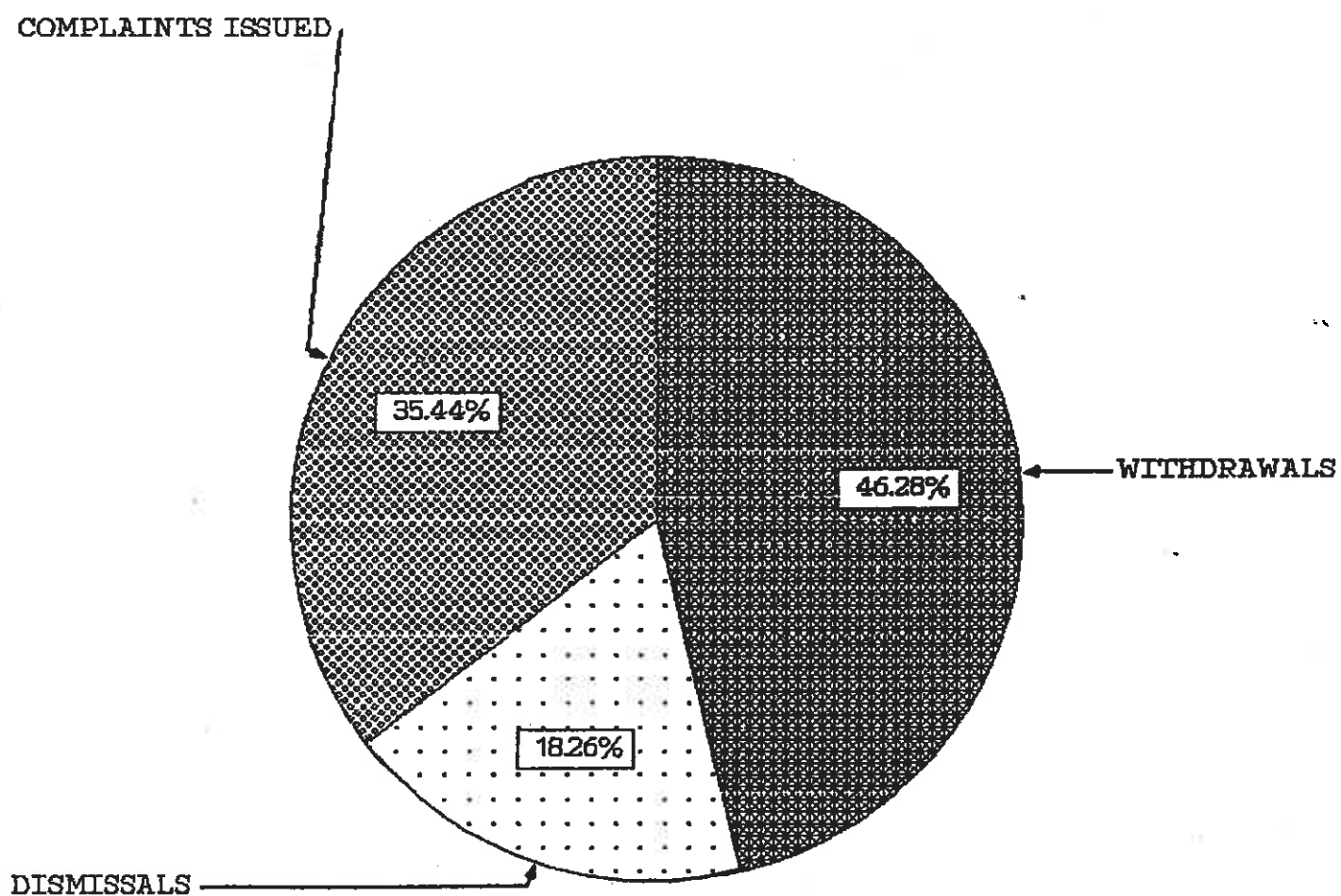
HEERA ELECTIONS HELD - FISCAL YEAR 1989/90

None

REGIONAL ATTORNEY STAFF ACTIVITY
Fiscal Year 1989/90

	<u>EERA</u>	<u>HEERA</u>	<u>RALPH C. DILLS ACT</u>	<u>TOTAL</u>
COMPLAINTS ISSUED	193	20	16	229
DISMISSALS	70	13	35	118
WITHDRAWALS	244	23	32	299

COMPLAINTS ISSUED



ADMINISTRATIVE LAW JUDGE STAFF ACTIVITY
Fiscal Year 1989/90

PROPOSED DECISIONS ISSUED - 64

WITHDRAWALS - 156

PRE-DECISION DISMISSALS - 3

